IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6046 OF 2007

Esperance Joaquim Dias .... Petitioner

versus

Joaquim Roni Dias ..... Respondent.

Mr. Harshal N. Mirashi for the petitioner
Mr. Raymod Samual for the Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 21ST AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner is wife whereas the respondent is husband. Marriage between the petitioner and the respondent was solemnised according to Christian rituals at Bombay in the year 1995. The respondent husband filed a petition for divorce under the Divorce Act of 1869 as amended by the Act of 2003. The petitioner has filed written statement and denied the allegations made in the petition. The evidence of the respondent husband is over and the witnesses examined by the respondent herein have been thoroughly cross examined by the counsel for the petitioner. It so happened that on account of absence of the petitioner

before the Family Court on 27th July 2007, the Court passed an order, that last chance was given to the respondent (petitioner herein) to file evidence and as the same was not filed on account of absence of the present petitioner, her evidence be treated as closed and the matter has been adjourned for judgment on 22nd August i.e. tomorrow.

3. The learned counsel for the petitioner submits that the petitioner is resident of Kuwait and she cannot be expected to attend on all the dates. It is also tried to be urged that the petitioner had filed an application claiming interim maintenance but instead of deciding the said application the main matter/divorce petition itself is taken up for hearing and disposal by the Family Court. Be as it may the learned counsel for the petitioner has assured to make the wife available on 12-9-2007 with a view to lead evidence on her behalf. A further statement is made that the witnesses of the petitioner will also be kept present on 12-9-2007 before the court and affidavit of examination-in-chief of the petitioner and the witnesses proposed to be examined in support of the petitioner, would be filed before 12th September and a copy thereof will be duly served on the respondent. Responding very positively and in all fairness the learned counsel for the respondent does not oppose the

offering of a chance to the petitioner to examine herself and her witnesses so that the petition can be decided on merit.

4. In my view the cause of justice would advance by setting aside the impugned order passed by the Family Court dt. 27-7-2007 and by offering one more opportunity to the petitioner to lead evidence, on condition that the petitioner shall file affidavit of examination in-chief of the petitioner and her witnesses before 12-9-2007 in the Family Court with a view to lead evidence on 12-9-2007. If and in case the petitioner fails to file affidavit of examination in chief before 12-9-2007 and does not present herself for cross examination with a view to lead evidence in the divorce petition on 12-9-2007 the trial court shall proceed to decide the petition in accordance with the law, without further accommodating the present petitioner. Writ petition is accordingly disposed of. Rule made absolute in the above terms. No order as to costs.

5. In view of the disposal of writ petition, Civil Application does not survive, it is disposed of as such.

6. Parties to act on an authenticated copy of this

order.

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